

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-492

J. Kirk Trombley, Esq.)
Appellant,)
)
v.)
)
Commonwealth of Massachusetts and)
Robert Anderson)
Appellees.)
)

BOARD'S RULING ON APPEAL

Background

This matter came before the State Building Code Appeals Board ("the Board") on the Appellant's appeal filed pursuant to 780 CMR 122.1. In accordance with 780 CMR 122.3, Appellant has petitioned the Board to rescind an order issued relative to 780 CMR R3.4.3.2 of the Massachusetts State Building Code ("MSBC") relative to manufactured buildings and building components for the property of 247 Goodale Street, West Boylston, MA. In accordance with G.L. c. 30A, §§ 10 and 11; GL c. 143, §100; 801 CMR 1.02 et. seq.; and 780 CMR 122.3.4, the Board convened an appeal hearing on December 6, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Following testimony, and based upon relevant information provided, Board members voted to uphold the decision issued by DPS Chief of Inspections, Building Division, Robert Anderson relative to 780 CMR R3.4.3.2 of the MSBC where the manufactured building units installed at the subject address had been declared to be irreparably damaged and therefore ordered to be removed from the property and appropriately disposed of at a cost to the manufacturer. (See copy of order made part of this decision as *Attachment A*.) The units were to be removed by October 15, 2007. **The appellant's appeal requesting that the order be rescinded is hereby DENIED by unanimous decision of the Board and the manufacturer is required to comply with the removal order immediately.**

Parties present

- Kim Memmesheimer
- George Byl
- Paul M. Sushchyle
- Jim Novic, Signature Building Systems
- Rick Wenner, PFS Corporation (Third Party Inspection Agent)
- Robert Anderson, DPS Chief of Inspections – Building Division
- Joseph McEvoy, DPS District Building Inspector

Findings of Fact and Analysis

Board members found that the decision to declare the units irreparably damaged was based on substantial and credible evidence submitted in the form of two separate engineering reports (copies are made part of this decision as *Attachments B* and *C*) and that the order to remove and dispose of the units at a cost to be absorbed by the manufacture was both reasonable and appropriate in consideration of facts revealed during site inspections performed by the referenced engineers and the DPS District Building Inspector. The history of events as outlined in Mr. Anderson's order is repeated below as the substantial reasons for the Board's decision.

On August 7, 2007 a hearing was convened to review matters relating to the complaint filed by Mr. and Mrs. Ronald Chasse. The complaint identified several violations of the MSBC with respect to a manufactured building product purchased by the complainants, manufactured by Signature Building Systems and delivered to 247 Goodale Street in West Boylston, MA. The August hearing was the second hearing that took place in order to determine what transpired during the manufacture of the home. The first hearing, which took place earlier in the year, concerned the role of the Third Party Inspection Agency (TPIA), PFS Corporation, during the production of the units.

The intent of the August 7, 2007 hearing was to determine a solution to an ongoing problem. The facts as presented by each party (manufacturer vs. complainant) identified a dispute as to the severity of the building damage. A report filed by the DPS Building Inspector Joseph McEvoy subsequent to his review of the project identified deficiencies and potential building code violations, but did not indicate that the building was unsafe to occupy. A report developed by Neal B. Mitchell, Jr., P.E. of Neal Mitchell Associated, Northbridge, MA indicated that there are major structural problems with the units. However, his report continued to state that "[c]ertainly the extent of the structural deficiency can only be established with a much more intensive investigation and evaluation, but in its present condition this house is no longer suitable for sale".

Based on testimony presented at the hearing as well as written documentation presented prior to and during the hearings procedures, it was Mr. Anderson's determination that further review of the matter was warranted in order to determine whether the home was truly damaged beyond reasonable repair or if an adequate engineering solution could be devised. Since a duly authorized representative of the factory who holds the title of Director of Engineering and who presumably understood the product and the engineering supporting its design disputed claimed that the unit were irreparably damaged, the prudent action was to seek verification of the claim that the building was unsafe and dangerous to occupy. Consequently, it was Mr. Anderson's direction to order an independent engineering review of the structure.

The order clearly indicated that the PFS Corporation was to provide the complainants with a list of three engineers who possessed a discipline in structural engineering and a general knowledge of the manufactured building systems. The complainants would then select a suitable engineer from the list to review the structural condition of the building. The cost of the review was to be absorbed by Signature Building Systems. The order indicated that the review should take place no later than thirty days from the date of the August hearing. It was made clear that, if the

review did not take place within this period of time, regardless of reason, or if the review indicated that the building was irreparably damaged, in all likelihood, the building units would be ordered removed from the property. After discussion on the matter, all parties agreed to the order indicating that thirty days allowed a reasonable time period to deal with this issue.

The thirty day period expired as of close of business on September 7, 2007. The order as identified above was not complied with during this period, thereby causing the manufacturer to be in default of the order. Although there may be reasons on one side or the other as to why the directive was not followed, the primary concern in this matter is one of public safety. Consequently, these reasons, whatever they may be, are set aside (not considered) in this decision. Additional concerns extend to the economic hardship that may have been incurred by the complainants.

Although not required in accordance with the directive, and at an additional cost to them, the complainants employed the services of a second engineer to review the project. A report was generated by Stanislav Berdichevsky, P.E. of Wayland, MA on September 5, 2007. Mr. Berdichevsky is a structural engineer. A copy of his report was forwarded to the Department of Public Safety on September 7, 2007. The report indicates that the lack of lateral rigidity if not addressed can have (and already has) serious implications on the building integrity and livability.

This report confirms previous claims that the building is unsafe and dangerous, and irreparably damaged as defined by 780 CMR R3. The purchaser of the manufactured building product should not have to pursue a remedy for a complaint against a manufacturer with the commonwealth. This is a matter that should have been resolved between the parties involved outside of the Department and this Board, and the factory should have known of the structural deficiencies and addressed them immediately, not after a protracted period of time. The filing of a report identifying significant structural damage by P.E. Mitchell, corroborated by a report from P.E. Berdichevsky, coupled with information provided by DPS Inspector McEvoy establishes that these units are damaged beyond suitable repair.

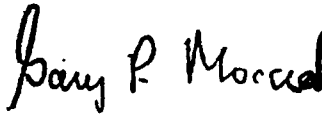
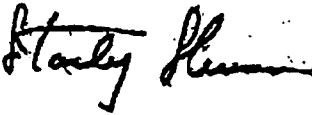
For these reasons, and as authorized by 780 CMR R3.4.3.2 these units shall be considered irreparably damaged, shall be removed from the identified property at a cost to the manufacturer and disposed of by the manufacturer in an appropriate manner.

Conclusion

For the foregoing reasons, the appellants appeal is hereby denied and the underlying order is to be effectuated immediately. By unanimous decision (3-0).

SO ORDERED.

Building Code Appeals Board,

Gary Moccia

Stanley Shuman



Alexander MacLeod

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest:


Patricia Barry
Clerk

Any person aggrieved by this decision may appeal to superior court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.